

# Spills of pig waste kill hundreds of thousands of fish in Illinois



Hopkins Ridge Farms is a hog confinement operation in Iroquois County where more than 8,000 pigs are raised to market weight. A July 2012 pig waste spill tied to Hopkins

Ridge polluted more than 20 miles of Beaver Creek, state officials allege. (Stacey Wescott / Chicago Tribune)

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**W**alking the Iroquois County streams his family had fished for decades, Leland Ponton was nearly brought to his knees by the stench of Beaver Creek.

"It looked like ink, the water. It had fish all over the place, dead. It wasn't fit for nothing. Not even a wild animal could drink out of it," said the 75-year-old retired farmer.

Government officials quickly assigned culpability for the deadly discharge: a waste spill from Hopkins Ridge Farms, a hog confinement operation where more than 8,000 pigs are raised to market weight before being trucked to slaughter.

The July 2012 spill polluted more than 20 miles of Beaver Creek, wiping out 148,283 fish and 17,563 freshwater mussels, according to reports from state biologists. Four years later, the creek's aquatic life has only begun to recover.

Authorities also have yet to collect penalties and cleanup costs from the confinement's influential owners — agribusiness executives who operate facilities in Illinois and Indiana that house tens of thousands of pigs. They deny responsibility.

As hog confinements like Hopkins Ridge spring up across Illinois, producing massive amounts of manure, a new pollution threat has emerged: spills that blacken creeks and destroy fish, damaging the quality of life in rural communities.

The lagoons that hold pig manure until farms can use it as fertilizer sometimes crumble or overflow. Leaks gush from the hoses and pipes that carry waste to the fields. And in some instances, state investigators found polluting was simply "willful" as confinement operators dumped thousands of gallons of manure they couldn't use or sell as fertilizer.

Analyzing thousands of pages from state agencies including the Environmental Protection Agency, the Department of Natural Resources and the attorney general's office, the Tribune found that pollution incidents from hog confinements killed at least 492,000 fish from 2005 through 2014 — nearly half of the 1 million fish killed in water pollution incidents statewide during that period. Pig waste impaired 67 miles

of the state's rivers, creeks and waterways over that time.

Using either measure, no other industry came close to causing the same amount of damage.

Fish kills are an imperfect measure of the damage caused by businesses, as some Illinois waterways already are so contaminated that little if any aquatic life remains, and some pollution sources degrade rivers without sending multiple fish to their deaths on a single day. Still, the fish kills do provide a gauge of the environmental impact of the modern pig-raising facilities that helped make Illinois the fourth-largest pork producer in the U.S.

They also show how little state authorities can do to protect Illinois waterways from this poisonous surge.

Confinements with multimillion-dollar annual revenues often paid just a few thousand dollars in fines after causing massive fish kills. Many went to court to challenge authorities; since 2005, the state attorney general has filed or resolved at least 26 pollution lawsuits against swine confinements. Some operators polluted repeatedly. And the multistate pork producers who supply the pigs and profit from the confinements were rarely held accountable, the Tribune found.

The state agencies responsible for protecting waterways and aquatic life — the EPA and DNR — play limited roles in determining where new confinements can be located or assessing their potential pollution risks.

Instead, Illinois livestock confinements are granted permits solely by the Illinois Department of Agriculture, whose mission is to promote livestock agriculture as well as regulate it.

Under state law, the department cannot consider a confinement owner's environmental record when reviewing an application to build a new site, and officials have issued numerous new permits to operators with multiple infractions.

Illinois has only recently required hog confinements to register with the state EPA, and that agency knows where only a fraction of them actually are located, records and interviews show. In most other top pork-producing states, environmental regulators maintain detailed inventories.

With swine confinements growing in number and size across the state, the count of facilities inspected by the state EPA dropped from an

annual average of 115 per year from 1999 to 2004 to 71 during the next six years, the most recent period for which the agency could provide data.

Still, state EPA officials argue the situation in Illinois is improving through a combination of government and industry changes.

"The hog facilities are run and designed much, much better than 10 years ago, and education is the way to ensure rules are fully followed," said Sanjay Sofat, who oversees confinement regulation as manager of the state EPA's Division of Water Pollution Control.

In 2010, Illinois' failure to monitor or regulate livestock confinements prompted the U.S. EPA to threaten funding cuts and decertification of the state EPA. Since then, Illinois has bolstered its inspections staff as well as documented and visited 236 of the largest swine facilities. That is fewer than half of the estimated 527 in the state and includes none of the additional 427 hog confinements with up to 2,500 animals.

### **Top producers accused**

State officials initially withheld records that would name the companies responsible for polluting Illinois waterways, citing privacy concerns. But the Tribune identified them by reviewing state investigative files, as well as copies of the checks that companies submitted to reimburse the state for restocking fish.

Those files revealed that influential producers like Hopkins Ridge Farms are among Illinois' alleged polluters.

Near the Indiana border in downstate Illinois, the Hopkins Ridge hog sheds are tucked between expansive corn and bean fields and a preserve of woods and marshlands called the Iroquois County State Wildlife Area.

For nearly three days in July 2012, facility operators used an irrigation pivot to spray 300 gallons of wastewater per minute onto a field, according to state government reports. The fluid coursed off the soaked earth into ditches and then into Beaver Creek until carp, pike, bass and catfish began floating belly up, state officials allege.

Responding to neighbors' calls about the spill, retired wildlife area superintendent Frank Snow quickly checked the creek for several miles. It was "completely black" and "fish were both dead and dying," Snow reported in a call to the Illinois Conservation Police, a division of the Department of Natural Resources.

Farmer Donald Savoie, 81, was tending to his yard when a neighbor alerted him that sludge and dead fish were floating down a nearby stretch of the creek.

"I walked over there and he was right. There was carp, there was bass, there was bullheads, there was catfish — it was amazing how many — and the creek was black," Savoie told the Tribune. "You could smell it. It was rank."

The spill had a lasting impact.

In October 2014, state biologists compared four surveys of the creek before the spill to three post-discharge surveys and found that nine fish species had not been detected since the fish kill and 18 others had not returned to previous levels, according to a pending lawsuit by the state attorney general.

Two of 18 species of mussels wiped out by the discharge were on the state's threatened list, the lawsuit said.

Ponton, the retired farmer, told the Tribune he only recently has noted improvement in the water.

"We are just now seeing fish move around a little bit," he said. "I believe in things that's right, and that was wrong. I'm upset because we take and we take and we take from nature, and we never bother to put back."

In December, the state attorney general filed a civil lawsuit to collect penalties in the incident. The amount is unstated, but state officials say the value of the lost fish and mussels is estimated at well over \$250,000.

One part-owner of the Hopkins Ridge facility, Iroquois County farmer and businessman Lebert Mercier, died in 2014, about two years after the spill. The attorney general is fighting to reopen his multimillion-dollar estate, alleging that it was closed one day after a Mercier family lawyer learned of the impending lawsuit. Family attorneys are fighting back, saying they never received written notice of the attorney general's claim.

Another part-owner is Malcolm DeKryger, who has served on the board of the Indiana Pork Producers Association and been president of that state's Pork Advocacy Coalition, an industry leadership group.

He also runs a company that owns and manages the Pig Adventure at Fair Oaks Farms, a northwest Indiana visitor center that promotes

confinement facilities as safe for the environment and nurturing for pigs. It is billed as the nation's premier agritourism destination.

DeKryger told the Tribune in a letter that he did not believe the facility was responsible for any pollution and would respond to the attorney general in court, presenting "appropriate facts and expert testimony in front of a jury of our peers."

He criticized the attorney general for taking three years before filing a court claim, saying that has hampered his ability to address the allegations. "I certainly want to operate (our facilities) in an environmentally responsible manner," DeKryger wrote. "Be assured that I wish to be a responsible pork producer and am committed to that mission."

Hopkins Ridge is only one of the alleged polluters to be run by top industry executives.

When a 4,500-pig operation in Iroquois County called R3E LLC pumped manure onto fields using leaky pipes in 2003, the resulting spill destroyed all aquatic life in a 1-mile stretch of Spring Creek some 40 miles northeast of Champaign. It killed 2,911 fish, state reports said.

Then in 2009, some 200,000 gallons of swine waste drained from a breach below the surface of one of the facility's massive earthen holding ponds. State biologists counted 110,436 dead fish along 19 miles of Spring Creek.

"Live bullheads were observed gasping at the surface," said a report from the Department of Natural Resources. "The slug of manure was still moving downstream."

For the 2003 spill, a facility partner paid the state \$649 to cover fish restocking costs. In 2014, five years after the bigger spill, R3E agreed to pay restocking and investigative costs of \$71,757 — without admitting wrongdoing.

One of R3E's four partners, Robert Frase, is president of the Illinois Pork Producers Association. He called both incidents unforeseeable accidents but told the Tribune: "We accept responsibility because it is our business to know what is going on down there. We weren't negligent in our operation and didn't deliberately dump."

Frase added: "I hope you find the sincerity most of us have for the work we do every day and our ability to raise a wholesome product."

The pigs came from Lehmann Bros Farm LLC, whose co-owner Art Lehmann is a former president of the state pork association. Lehmann said he had nothing to do with the spills but praised Frase and R3E for working quickly to correct problems.

"It's not a willful situation," Lehmann said. "The industry has worked quite hard to have a good environmental track record. We live out here in the country too. We drink the water, and our families do."

### **'Willful' dumping**

When Donald Irlam's central Illinois pig barns were overflowing with manure in the rainy summer of 2009, he made what he would later call "a bad decision," government records show.

Irlam pumped 3,100 gallons from the facility's underground waste-storage pits into a rusted metal irrigation tank, hitched that tank to a tractor and wheeled it to the top of a nearby slope. Then he loosened a valve and let the slime gush down a ravine, into his neighbor's cattle-watering pond and Henry Creek.

Irlam unloaded the tank at least nine more times over the following weeks, releasing more than 27,000 gallons of pig manure and killing an estimated 1,650 pounds of fish — mostly largemouth bass and bluegill — according to government reports and Irlam's admissions in Morgan County court.

Still, like many other hog producers who fouled Illinois rivers and streams, Irlam faced only mild government sanctions. He pleaded guilty to misdemeanor criminal waste disposal and paid a fine of \$500, even though the cleanup cost tens of thousands. He has since closed the pig facility.

Irlam, 64, declined to comment. "I'm not going to talk to any reporter," he said before quickly shutting the front door of his Springfield home.

A "contract grower," Irlam was paid to raise pigs for a larger operator. Such companies own the animals, supply their feed and medicine, and typically dictate production practices, but the local confinement operators like Irlam are the ones usually held liable for poisonous spills.

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— Dan Stephenson, Illinois assistant fisheries director

In the quiet farming town of Murrayville about 40 miles west of the state capital, Irlam worked in his four long hog sheds for about a half-hour in the mornings before heading to his second job as a tax collector for the state Department of Revenue.

But by July 2009, Irlam's operation was in trouble, according to hundreds of pages of court and government records examined by the Tribune. With his 600 hogs producing an estimated 262,800 gallons of manure a year, he had failed to arrange with neighboring farmers to spread the waste on their fields as fertilizer or pay for disposal firms or fellow confinement operators to take it.

Instead, Irlam let hog muck fill the 8-foot-deep pits beneath his slotted concrete floors until it rose up and soaked the pigs' hoofs and bellies. Then he loaded the portable manure tank farmers often call a "honey wagon" and began dumping waste downhill.

Alerted by Irlam's neighbor, farmer Steve Suttles, government officials hustled to the scene and found that a trail of manure had burned a path 25 yards wide and 85 yards long down the grassy ravine.

Henry Creek "was full and was running black, frothy waste," Morgan County sheriff's Deputy Tom Keegan wrote in his report. "You could see how the wagon was backed up and dumped so that the waste would run down the hill."

Dan Stephenson, assistant fisheries director for the state DNR, reported "hundreds, possibly thousands of dead, decaying fish" in Suttles' cattle-watering pond. "The water was black and (reeked) of manure and dead fish," he wrote.

The Illinois attorney general filed a civil lawsuit to collect penalties and cleanup costs from Irlam but abandoned the case in 2012 after Irlam filed for bankruptcy, saying he was unable to pay numerous mortgage and credit card debts. That decision surprised bankruptcy experts, who said the state could easily have pursued Irlam's \$64,000 state salary.

"I don't know why the state wouldn't have gone forward with that. It does make one scratch their head and wonder, doesn't it?" said James Inghram, the court-appointed trustee in Irlam's bankruptcy case.

The attorney general's office told the Tribune in a written statement that Irlam's Revenue Department job did not earn him special treatment. "Our primary focus was stopping the pollution, getting the land cleaned up and ensuring this couldn't happen again. His employment had no bearing on that outcome," the statement said.



In a court deposition for his ongoing civil lawsuit, Suttles said two dozen of his cows aborted their calves after drinking from the poisoned pond.

The Tribune separately obtained a state health department analysis of Suttles' well water showing it was undrinkable because of fecal matter and other pathogens. "My whole place is contaminated," Suttles' deposition said.

Suttles' suit also alleges that Iowa hog supplier Robin Hewer had control over Irlam's operation because he determined the selection and number of pigs in the facility, owned the animals and also dealt with a feed company to control their husbandry.

Hewer sought to be dismissed from the case, but Morgan County Circuit Judge Christopher Reif refused to allow it, saying in an order: "He wants to profit without risk of liability. Send more hogs to a facility (than) it could possibly handle, collect your payments, and pass on liability to the property owner."

No state government authority has publicly attempted to hold Hewer accountable. He did not respond to requests for comment.

### **'We are trying'**

Pork industry leaders say pollution events are relatively rare. Housing pigs in confinements, they add, protects waterways more effectively than the old-fashioned method of raising livestock on pastures and letting the manure wash off into ditches and creeks during rainstorms.

Modern facilities store the muck in underground cesspits before pumping it into outdoor holding tanks or earthen lagoons and then spreading it as fertilizer once or twice a year on nearby crop fields. Ideally, this system creates a "virtuous cycle" of untreated waste that never touches a river or stream.

But when a facility produces hundreds of thousands of gallons of waste each year, the cycle can easily break down.

One place where the system has repeatedly failed is in Woodford County in central Illinois, where Illinois pork producer Kenneth Fehr and his sons manage a cluster of hog facilities close to a slow-moving waterway called Panther Creek.

In 2005 and 2006, state EPA officials cited Fehr and his sons in separate incidents for overapplying swine manure on cropland and for creating a water pollution hazard.

Five years later, in February 2011, the state EPA reported that tributaries of Panther Creek were coated in foam and darkened by swine waste. The agency alleged that Fehr Brothers had stockpiled at least 65 semitrailer loads of manure — an estimated 400,000 gallons — and then applied it on a frozen, 92-acre field. When the field thawed, swine waste poured into a tributary of the creek, according to state EPA reports.

"When asked why they hauled the manure (one of Fehr's sons) stated that they had no choice because the manure pits were full and about to run over," a state EPA report said.

Also in 2011, the state attorney general alleged that waste was overflowing from a second Fehr hog operation because an underground plumbing system was plugged and "has historically proven unreliable." A state inspector observed a foamy discharge smelling of swine waste in a tributary of Panther Creek about a quarter-mile away. The inspector also noted numerous dead hogs disintegrating in a field, some of them partially eaten by scavengers. "It was obvious ... that the animals had been dead for weeks," the state attorney general alleged.

And in a third incident that year, a kink caused a hose fitting to rupture and release 6,000 gallons of Fehr Brothers pig manure onto a field, where some of it drained into a tributary of Panther Creek's west branch, according to the state.

The state attorney general's 2011 civil lawsuit asks that Fehr Brothers obtain a discharge permit that would require it to undergo additional inspections and provide the state EPA with an enforceable waste-handling plan. Five years later, that case remains unresolved.

In a Tribune interview, Fehr denied that his facilities ever polluted any local creeks. He and his family made mistakes in years past, he said, but have invested in safe and up-to-date manure-handling equipment and practices.

"We have become better farmers because we are trying harder than most," Fehr said.

By contrast, some of his neighbors still apply their hog manure to frozen fields, Fehr said, or simply spray the effluent rather than knifing it into the earth to reduce odors and the chance of runoff. "We look at manure as a nutrient that's got a value. We do not want to waste it," he said.

Shaded by clumps of trees as it threads through corn and grain fields, Panther Creek is special to environmentalists who petitioned state officials years ago to protect it as a key tributary of the Mackinaw River and the Mississippi River Basin.

Following two serious discharges from swine confinements that killed fish, a local Sierra Club group in 2003 organized volunteers to collect water samples from streams and drainage ditches near the facilities and the crop fields where swine manure was applied as fertilizer.

The Sierra Club sent the state EPA lab results — prepared by a commercial testing firm in Peoria — that indicated high levels of contamination from fecal coliform bacteria near the Fehr facilities.

But there was no official response to the club's expensive yearlong effort, and the team disbanded.

"The volunteers got so discouraged," said Joyce Blumenshine, a longtime leader with the Sierra Club's Heart of Illinois Group. "We still have concerns about Panther Creek. It is a huge problem. The public is handicapped and can't do anything."

Fehr said he was aware of the Sierra Club's sampling but believes those streams could have been damaged by cattle operations, commercial fertilizer and aging farmhouse septic systems. He said he felt unfairly targeted by the club's unproven allegations and the state attorney general's unresolved lawsuit.

"Hog farmers, we are given a bad name when we're not the source of the pollution," he said.

In 2013, another nearby hog confinement had a massive manure spill that contaminated more than 4 miles of Panther Creek's west branch.

Records show family members at the 7,200-hog Meadow Lane Farms had unknowingly sprayed about 84,000 gallons of waste onto a cornfield from one fixed position for about four hours. The facility operators discovered the accident that day but did not report the discharge as required or take immediate steps to remediate it, according to state officials.

The repeated abuse of Panther Creek has dismayed local residents, who looked at the string of discharges as "an environmental catastrophe," said area fisherman Ed Mayhall Jr.

Fehr was once in a livestock trucking business with the owner of Meadow Lane, but they parted ways a couple of years before the spill. Meadow Lane paid state penalties and fees of about \$25,000 and built a new \$160,000 concrete waste storage tank.

"We felt very bad for this whole situation," Meadow Lane owner Mark Schmidgall told the Tribune. For six days following the spill, his family, friends and neighbors worked almost nonstop to clean up the mess, and his facility subsequently overhauled its waste management

practices. "We took 100 percent of the blame," he said.

State biologists found that discharge killed 29,528 fish, including smallmouth bass, bluegill, golden redhorse and slenderhead darter.

*Twenty students from Northwestern University's Medill journalism school assisted Tribune reporter David Jackson with this project as part of an investigative reporting class.*

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